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Evidence--Confessions Admissable When Obtained During a Period of Illegal Detention (People v. Lane, 10 N.Y.2d 347 (1961))

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EVIDENCE — CONFESSIONS ADMISSIBLE WHEN OBTAINED DURING A PERIOD OF ILLEGAL DETENTION.—The defendant was indicted for felony murder. In the course of the trial the district attorney submitted certain confessions which the defendant had made. The defendant contended that the confessions were inadmissible, as they had been given in the course of a period of illegal detention by a state officer, contrary to the New York prompt arraignment statutes.[1] The County Court admitted the confessions and the defendant was convicted of first degree murder. On appeal, the Court of Appeals *held* that the confessions were admissible so long as they were voluntary, and that the illegal detention did not render them inadmissible per se; rather, it was simply an element to be considered at the trial in determining the voluntary nature of the confession. However, the Court reversed the conviction on other grounds.[2] Judge Fuld, in a strongly worded concurring opinion, condemned the admission of the accused's illegally obtained confessions, claiming this action by the Court is contrary to the underlying rationale of the recent Supreme Court decision in *Mapp v. Ohio*.[3] *People v. Lane*, 10 N.Y.2d 347, 179 N.E.2d 339, 233 N.Y.S.2d 197 (1961).

The exclusion of illegally obtained evidence originated from the fourth amendment's protection against unlawful searches and seizures. As early as 1914, the United States Supreme Court, in *Weeks v. United States*,[4] declared that the rights guaranteed by the fourth amendment would be meaningless if evidence seized without legal sanction was admitted in federal courts. It concluded that "the efforts of the courts . . . to bring the guilty to punishment . . . are not to be aided by the sacrifice of those great principles . . . which have resulted in their embodiment in the fundamental law of the land." [5] Thirty-five years later, in *Wolf v. Colorado*,[6] the Court held that the essentials of the fourth amendment apply to the states, but refused to impose the ex-

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[1] N.Y. CODE CRIM. PROC. § 165 provides: "The defendant must in all cases be taken before the Magistrate without unnecessary delay, and he may give bail at any hour of the day or night." N.Y. PEN. LAW § 1844 provides: "A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

[2] People v. Lane, 10 N.Y.2d 347, 354, 179 N.E.2d 339, 340-41, 223 N.Y.S.2d 197, 199-200 (1961). The Court reversed on the ground that a district attorney can not make comments in summation to the effect that one of the suspects had not been beaten, when evidence pertaining to the physical treatment of the defendant has been excluded.

[3] 367 U.S. 643 (1961).

[4] 232 U.S. 383 (1914).

[5] Weeks v. United States, 232 U.S. 383, 393 (1914).

[6] 338 U.S. 25 (1949).

clusionary rule on state law enforcement agencies. It reasoned that the rule was not an essential element of the right of privacy and that they could not prevent the states from formulating their own laws to insure it.[7] *Mapp v. Ohio*,[8] decided last year by the Supreme Court, overruled the *Wolf* case in that it concluded that the fourth and fourteenth amendments required state adherence to the exclusionary rule. It based its conclusion on the fact that the means provided by the states to protect their citizens from illegal search and seizure had proved to be futile.[9]

A more complex problem has been presented by the attempt to exclude voluntary confessions obtained during periods of illegal detention. In 1943, in *McNabb v. United States*,[10] the Supreme Court exercised its supervisory authority over criminal justice in federal courts to exclude a voluntary confession gained while the accused was held illegally by federal officers. This decision overruled, at least on the federal level, the long standing doctrine that the sole criteria in determining the admissibility of confessions was their voluntariness.[11] The *McNabb* opinion, as further enunciated in *Mallory v. United States*,[12] stressed that the purpose behind the congressional requirement of prompt arraignment was to avoid the unwarranted detentions which lend themselves to intensive interrogation and other evils of the "third degree." The Court concluded: "a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law." [13]

Since these decisions were not based on any constitutional right, but on what is now Rule 5(a) of the Federal Rules of Criminal Procedure,[14] the Supreme Court has not attempted to impose this exclusionary rule on the states. The sole check placed on the states has been the subjecting of their convictions to the somewhat nebulous standards of the due process requirement of the fourteenth amendment. The Court has often stated that not every illegal or unethical practice will constitutionally void the evidence thereby obtained, but only such actions as offend "a sense of justice," "shock the conscience" or "run counter to the decencies of civilized conduct," [15] are nullified in the face of due

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[7] *Id.* at 30-33.
[8] Mapp v. Ohio, 367 U.S. 643 (1961).
[9] *Id.* at 651-53.
[10] 318 U.S. 332 (1943).
[11] Wilson v. United States, 162 U.S. 613 (1896).
[12] 354 U.S. 449 (1957).
[13] McNabb v. United States, 318 U.S. 332, 345 (1943).
[14] FED. R. CRIM. P. 5(a).
[15] Rochin v. California, 342 U.S. 165, 172-73 (1952); Lisenba v. California,

process objections. In *Culombe v. Connecticut*,[16] the Court reiterated its position that the illegal detention by state officials was not so grievous a wrong as to constitute a deprivation of rights without due process.[17] Consequently, in reviewing the Connecticut law, which considered illegality as only one factor in determining whether the confession was voluntary,[18] the Court, while finding that the confession in question was involuntary, concluded that voluntariness is still the sole determinant of whether the accused was deprived of due process of law in a state prosecution.

Here, for the first time since *Mapp v. Ohio*,[19] in which the Supreme Court extended one of its exclusionary rules to the states, the Court of Appeals was faced with a situation in which it could apply the long established New York rule concerning the admissibility of confessions, or instead recognize the exclusionary standards set by federal courts. Although the majority reversed the conviction on other grounds, they definitely stated that the admissibility of confessions is a matter of state procedure. New York procedure is and always has been to consider a delay in arraignment merely as one fact for the jury to consider in determining whether or not the confession was coerced.[20] Only if the jury decides that the confession was involuntary will its use be prohibited.[21] The view of the majority is that which the Supreme Court expressed in *Stein v. New York*,[22] when it stated:

"the defendants confuse the more rigid rule of exclusion which, in the exercise of our supervisory power, we have promulgated for federal courts with the more limited requirements of the Fourteenth Amendment." [23]

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314 U.S. 219, 236 (1941); Brown v. Mississippi, 297 U.S. 278, 285-86 (1936); Snyder v. Massachusetts, 291 U.S. 97, 105 (1934).

[16] 367 U.S. 568 (1961). This decision was handed down on the same day as the *Mapp* case.

[17] *Accord*, Stein v. New York, 346 U.S. 156, *rehearing denied*, 346 U.S. 842 (1953); Gallegos v. Nebraska, 342 U.S. 55, 63-65 (1951).

[18] Culombe v. Connecticut, 367 U.S. 568, 602 (1961). The other factors considered along with illegal detention were "the duration and conditions of the detention, . . . the manifest attitude of the police toward [the accused, and] his physical and mental state. . . ." *Ibid.*

[19] 367 U.S. 643, 655 (1961). "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."

[20] People v. Balbo, 80 N.Y. 484, 495 (1880); *accord*, People v. Perez, 300 N.Y. 208, 90 N.E.2d 40 (1949), *cert. denied*, 338 U.S. 952 (1950); People v. Alex, 265 N.Y. 192, 192 N.E. 289 (1934); People v. Mummiani, 258 N.Y. 394, 180 N.E. 94 (1932).

[21] Murphy v. People, 63 N.Y. 590, 597-98 (1876); People v. Rogers, 18 N.Y. 9, 13-14 (1858); See also note 20 *supra*.

[22] 346 U.S. 156 (1953).

[23] Stein v. New York, 346 U.S. 156, 187 (1953); *accord*, Culombe v.

These points were enlarged upon in the dissenting opinion. After dismissing the grounds upon which the majority reversed as not significant enough to be a cause for reversal, Chief Judge Desmond contends that a new exclusionary rule is not required by any principle of constitutional or natural law, and to make such a procedural innovation would be beyond the power of the Court. He further states that the New York prompt arraignment statute was enacted to protect citizens from prolonged and oppressive questioning, but the statute is not a part of the law of evidence and can not regulate the admissibility of confessions.[24] Judge Desmond cites a long line of New York cases, starting with *People v. Balbo*,[25] in 1880, which have held that the people are not to be precluded from availing themselves of a confession merely because it was made while an officer was illegally detaining the defendant. Judge Desmond is thus using the same reasoning as did Judge Cardozo, in *People v. Defore*, when he wrote that the outcome of an exclusionary rule would be to let "the criminal . . . go free because the constable has blundered."[26] This similarity of approach is continued by the fact that both judges conclude that if any change is to come it must be made by legislation and not judicial interpretation. The *Defore* case, which dealt with unreasonable search and seizure, was overruled by *Mapp v. Ohio* because it was felt that in that area a constitutional right was being endangered; but the *Mapp* Court did not go so far as to say that the constitution commands that every violation of state criminal procedure be protected against by means of the exclusionary rule.

The Chief Judge's opinion dismisses the *McNabb-Mallory* rule as a pure exercise of the Supreme Court's supervisory authority in providing a sanction for Rule 5(a) of the Federal Rules of Criminal Procedure. Accepting past Supreme Court opinions to the effect that the exclusionary rule as to confessions is not made applicable to the states by due process requirements,[27] Judge Desmond distinguishes these cases from the situation in the *Mapp* case. Recognizing that the latter was necessitated by the protection of the constitutional right of privacy, he reasoned that confessions obtained during an illegal detention can be distinguished

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Connecticut, 367 U.S. 568, 601-02 (1961); Rogers v. Richmond, 365 U.S. 534, 543-44 (1961); Gallegos v. Nebraska, 342 U.S. 55, 64 (1952).

[24] People v. Lane, 210 N.Y.2d 347, 357-58, 179 N.E.2d 339, 344-45, 223 N.Y.S.2d 197, 203-04 (1961) (Desmond, C.J., dissenting).

[25] 80 N.Y. 484, 495 (1880); *accord*, People v. Perez, *supra* note 20; People v. Alex, *supra* note 20; People v. Mummiani, *supra* note 20.

[26] 242 N.Y. 13, 21, 150 N.E. 585, 587, *cert. denied*, 270 U.S. 657 (1926).

[27] See cases cited note 23 *supra*.

in that they do not violate a right so fundamental as to warrant the same constitutional protection.[28]

In direct opposition to the majority and dissenting opinions, Judge Fuld, in a concurring opinion, declares that the admission of evidence obtained in contravention of law is "indefensible." Relying heavily on the reasoning of Justice Brandeis' dissent in *Olmstead v. United States*,[29] the majority opinions in *McNabb v. United States*,[30] *Elkins v. United States*[31] and *Mapp v. Ohio*,[32] Judge Fuld states that the time has come for the Court of Appeals to reconsider its old and unsatisfactory rule which allows into evidence a confession obtained through police lawlessness. He reasons that the object of our law enforcement agencies is to see that justice is served and not to obtain convictions. Prompt arraignment statutes must be provided to protect against the dangers of the over-zealous as well as the despotic. When one is held without the benefit of legal arraignment he is wholly at the mercy of the police; he is without the aid of friend or counsel and is denied the protection of the magistrate. Bearing this in mind, Judge Fuld concludes that only if the illegally obtained confession is excluded can there be an effective check put on such evil practices. This reasoning is analogous to that used by the Supreme Court in their determination that evidence secured through illegal search and seizure must be excluded from all courts.[33] In both situations Judge Fuld concludes that the "imperative of judicial integrity" [34] demands that the fruits of police lawlessness be barred from the courts. The judge realizes that this rule will slightly hamper law enforcement, but he asserts that before we

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[28] People v. Lane, *supra* note 24, at 359-60, 179 N.E.2d at 344, 223 N.Y.S.2d at 204-05. See also Mapp v. Ohio, 367 U.S. 643, 655, 657 (1961). "[E]vidence secured by official lawlessness [is a] flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. . . . [T]he exclusionary rule is an essential part of both the Fourth and the Fourteenth Amendments. . . ." Compare Gallegos v. Nebraska, 342 U.S. 55, 63-64 (1951). "The rule of the *McNabb* case . . . is not a limitation imposed by the Due Process Clause. . . . Compliance with the *McNabb* rule is required in federal courts by this Court through its power of supervision over the procedure and practices of federal courts in the trial of criminal cases."

[29] 277 U.S. 438, 471-85 (1928).

[30] 318 U.S. 332 (1943).

[31] 364 U.S. 206 (1960).

[32] 367 U.S. 643 (1961).

[33] *Ibid.* The basis of the exclusionary rule is best summarized by this quote: "If the evidence seized in violation of the fourth amendment can be used against the accused his right against such searches and seizures is of no value, and . . . might as well be stricken from the Constitution." Weeks v. United States, 232 U.S. 383, 393 (1914).

[34] Elkins v. United States, 364 U.S. 206, 222 (1960).

can expect the people to respect the law, the government itself must set an example.[35]

The split of opinion in the present case is indicative of the two-pronged dilemma which has long plagued the American judiciary. The first problem is the necessity of "achieving a balance between the competing interests of society in the protection of cherished individual rights on one hand, and in effective law enforcement and investigation . . . on the other." [36] The second is that of defining the respective positions of the state and federal governments in regard to their duties and limitations in the enforcement of criminal justice.

The last three decades have witnessed a movement on the part of the Supreme Court, through the fourteenth amendment, to require state courts to show a fundamental fairness in their treatment of defendants. Originally, the constitutional power to nullify state decisions was used only when the state took such action as manifestly violated a defendant's right to a fair trial. As law enforcement officers became more responsible and their methods of exacting evidence more sophisticated, the Court's duty to enforce the vague and indeterminate requirements of the due process clause resulted in the disqualification of state methods which many felt were essential to the vital function of law enforcement.[37]

Judge Fuld desires this liberal trend, through which evidence secured by illegal search and seizure has been banned from state and federal courts alike, to be extended into another area: that of voluntary confessions obtained in contravention of prompt arraignment statutes. However, the majority and dissenting opinions evidence a contrary view. They contend that in the absence of a violation of a fundamental right, the states should determine their own rules of evidence.

"Inevitably, a period of movement and development in any major area of legal doctrine results in a series of unanswered questions." [38] The reasoning of recent Supreme Court decisions weighs heavily on the side of Judge Fuld. The future may see illegal detention considered tantamount to coercion. If that be the case, the present

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[35] People v. Lane, 10 N.Y.2d 347, 356-57, 179 N.E.2d 339, 342, 223 N.Y.S.2d 197, 202 (1961) (Fuld, J., concurring). See also Olmstead v. United States, 277 U.S. 438, 485 (1928) (dissenting opinion). "Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. . . . If the government becomes a lawbreaker, it breeds contempt for law. . . ."

[36] People v. Waterman, 9 N.Y.2d 561, 564, 175 N.E.2d 445, 447, 216 N.Y.S.2d 70, 73 (1961).

[37] Allen, *Due Process and State Criminal Procedures: Another Look*, 48 Nw. U.L. REV. 16, 30 (1953).

[38] *Id.* at 28.

federal exclusionary procedure could no longer apply only to federal courts, but would be an essential element in the protection of the individual in state court proceedings.

FEDERAL EMPLOYERS' LIABILITY ACT — MISREPRESENTATION AS TO PRE-EXISTING INJURY NO BAR TO RECOVERY. — Plaintiff initiated this action in a West Virginia state court under the Federal Employers' Liability Act[1] seeking damages for injuries sustained during the course of his employment by the defendant, the Norfolk and Western Railway. By a special plea, the defendant entered a defense that the plaintiff was not "employed" within the meaning of the act.[2] This defense was grounded upon allegations that plaintiff had made fraudulent representations in his employment application pertaining to his congenitally defective back condition, that he would not have been hired but for these misrepresentations, and that the physical defects fraudulently concealed contributed to the injury. After all the evidence had been presented, the trial court directed the jury to bring in a verdict for the defendant on the grounds that the defendant had been deceived into hiring the plaintiff, and that his misrepresentations had a "direct causal connection" with the injuries. The Supreme Court of Appeals of West Virginia declined to review. On a writ of *certiorari,* the United States Supreme Court reversed the state court's decision, and *held* that persons procuring employment by means of fraud other than the precise type defined by the Court in *Minneapolis, St. P. & S. Ste. M. Ry. v. Rock*[3] will not be deprived of the status of "employee" under the FELA;[4] moreover, this status will not be affected by the fact that the employee's misrepresentation contributed to the injury. *Still v. Norfolk & W. Ry.,* 368 U.S. 35 (1961).

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1 35 Stat. 65 (1908), 45 U.S.C. §§ 51-60 (1958).

2 35 Stat. 65 (1908), as amended, 53 Stat. 1404 (1939), 45 U.S.C. § 51 (1958) provides: "Every common carrier by railroad while engaging in commerce between any of the several States or Territories . . . shall be liable in damages to any person suffering injury while he is *employed* by such carrier in such commerce . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence. . . ." (Emphasis added.)

3 279 U.S. 410 (1929).

4 35 Stat. 65 (1908), as amended, 53 Stat. 1404 (1939), 45 U.S.C. § 51 (1958).